

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ASARCO, LLC and Silver Bell Mining, LLC
Employer-Petitioner

and

Case 28-RM-255301

United Steel, Paper and Forestry, Rubber, Manufacturing,
Energy, Allied Industrial and Service Workers
International Union, Local 937
Union

ORDER

The Employer-Petitioner's Request for Review of the Regional Director's administrative dismissal of the RM petition is denied as it raises no substantial issues warranting review.¹ The Employer-Petitioner's Request for Review of the Regional Director's determination to hold the petition in abeyance is denied as moot.²

JOHN F. RING,

CHAIRMAN

¹ In denying review of the Regional Director's administrative dismissal, we additionally rely upon *Marion Memorial Hospital*, 335 NLRB 1016, 1019 & fn. 11 (2001), enf'd. 321 F.3d 1178 (D.C. Cir. 2003), for the proposition that employees' failure to support a strike does not constitute an expression of opposition to union representation. More generally, we also rely on *Wisconsin Porcelain Co.*, 349 NLRB 151, 151–152 (2007), in finding that the Employer-Petitioner's evidence does not establish a good-faith reasonable uncertainty in the Union's continuing majority status. We would, however, be willing to consider, in a future appropriate case, whether and under what circumstances a decline in union membership may be relied upon to support a good-faith reasonable uncertainty of an incumbent union's continuing majority support for purposes of an RM petition. See *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 729 (2001) (applying good-faith reasonable uncertainty standard to RM petitions).

The Regional Director's dismissal letter inadvertently stated that the parties had the right to request review pursuant to Sec. 102.67 of the Board's Rules and Regulations, and thus the Employer-Petitioner cited that section in seeking review. Requests for review of administrative dismissals are governed by Sec. 102.71, however, and we consider the Employer-Petitioner's request for review as having been filed pursuant to that section.

² As the Employer-Petitioner's Request for Review of the abeyance determination is moot, we do not pass on the Regional Director's application of the Board's blocking-charge policy. We observe, however, that the Board has recently adopted changes to the blocking charge policy. See Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships, 85 Fed. Reg. 18366 (Apr. 1, 2020). Those amendments are not effective until July 31, 2020. See 85 Fed. Reg. 20156 (Apr. 10, 2020).

MARVIN E. KAPLAN,

MEMBER

WILLIAM J. EMANUEL,

MEMBER

Dated, Washington, D.C., July 6, 2020.